

EXHIBIT B

Page 1

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----X5 In re: Chapter 11
67 GAWKER MEDIA LLC, et al., Case No. 16-11700
8 (SMB)
910 Debtors.
11 -----X
1213 DATE: November 15, 2017
1415 TIME: 10:01 A.M.
1617 DEPOSITION of CHAD E. MILTON, taken
18 by the Plaintiff, pursuant to Subpoena and to
19 the Federal Rules of Civil Procedure, held at
20 the offices of Golenbock Eiseman Assor Bell &
21 Peskoe, 711 Third Avenue, New York, New York
22 10017, before Robert X. Shaw, CSR, a Notary
23 Public of the State of New York.
24

<p>1 2 APP E A R A N C E S :</p> <p>3 4 HARDER MIRELL & ABRAMS, LLP 5 Attorneys for Plaintiff 6 132 S. Rodeo Drive, Fourth Floor 7 Beverly Hills, California 90212 8 BY: DILAN A. ESPER, ESQ. 9 -and- 10 GOLENBOCK EISEMAN ASSOR BELL & 11 PESKOE, LLP 12 Attorneys for Plaintiff 13 Pregame LLC 14 711 Third Avenue 15 New York, New York 10017 16 BY: MICHAEL S. WEINSTEIN, ESQ. 17 212.907.7347 18 desper@hmafirm.com 19 mwinstein@golenbock.com 20 21 SAUL EWING ARNSTEIN & LEHR LLP 22 Attorneys for Ryan Goldberg 23 1037 Raymond Boulevard, Suite 1520 24 Newark, New Jersey 07102 25 BY: DIPESH PATEL, ESQ. 26 dipesh.patel@saul.com 27 973.286.6713 28 WILLIAMS & CONNOLLY, LLP 29 Attorneys for Ryan Goldberg 30 725 12th Street, N.W. 31 Washington, D.C. 20005 32 BY: THOMAS G. HENTOFF, ESQ. 33 GIZMODO MEDIA GROUP 34 BY: LYNN OBERLANDER, ESQ. 35 EVP and General Counsel 36 646.214.7898 37 38 * * *</p>	<p>Page 2</p> <p>1 Chad E. Milton 2 a dispute between two parties of which I had 3 information, but I've forgotten what it was. 4 Q. Do you remember what type of 5 insurance it was? 6 A. It was media liability insurance. 7 Q. And was the underlying claim a 8 defamation claim? 9 A. I don't remember. 10 Q. Okay. I'm going to go through a 11 few of the ground rules of the deposition. 12 First of all, you're allowed to 13 take a break whenever you want to. This is a 14 deposition, not an inquisition. If you need 15 to, at any point in time, just let me know. 16 A. Okay. Thank you. 17 Q. Remember to let me finish each 18 question before starting your answer. I'll 19 try and let you finish your answer before 20 starting the next question; that will allow 21 the court reporter we've just been talking 22 about to have a clear record, which is what 23 we want. Do you understand that? 24 A. I do understand it. Thank you. 25 Q. And do you understand that you are</p>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>Page 3</p> <p>1 Chad E. Milton 2 C H A D E. M I L T O N, called as a 3 witness, having been first duly sworn by a 4 Notary Public of the State of New York, was 5 examined and testified as follows: 6 EXAMINATION BY 7 MR. ESPER: 8 Q. Please state your name for the 9 record. 10 A. Chad E. Milton. 11 Q. What is your address? 12 A. 8821 Alhambra Street, Shawnee 13 Mission, Kansas 66207 14 Q. Good morning, Mr. Milton. 15 A. Good morning. 16 Q. Have you ever had your deposition 17 taken before? 18 A. Yes. 19 Q. How many times? 20 A. Once. 21 Q. Okay. What was the occasion for 22 that? 23 A. I really don't recall the 24 circumstances. I was a fact witness in a, 25 involving an insurance policy, and there was</p>	<p>Page 5</p> <p>1 Chad E. Milton 2 under the same oath that you would be under 3 in a court of law and you have the same 4 obligation to give the most truthful and 5 correct testimony you can? 6 A. Yes, I understand that. 7 Q. Okay. 8 Who has employed you in this case? 9 A. I was retained, I was engaged by a 10 law firm to, and asked to come as an expert 11 witness. 12 Q. Which law firm? 13 A. Well, my -- most of my dealings 14 were with the Saul Ewing law firm. 15 Q. Okay. Did you have any 16 communications, Yes or No, with Ropes & Gray? 17 A. No. 18 Q. Okay. And did you have any 19 communications with Mr. Hentoff's office? 20 A. Yes, I did. 21 Q. Okay. How much are you being 22 compensated? 23 A. \$300 an hour. 24 Q. And how many hours about have you 25 worked on this so far?</p>

<p style="text-align: right;">Page 6</p> <p>1 Chad E. Milton</p> <p>2 A. Six or seven.</p> <p>3 Q. Okay. Have you ever been an expert witness before?</p> <p>4 A. No.</p> <p>5 Q. Okay. Now, you went into an extensive discussion of your professional background in your declaration and I appreciate that;</p> <p>6 MR. ESPER: So, let's go ahead and mark that as an exhibit. We'll call it Exhibit 5.</p> <p>7 (Milton Exhibit 5, expert declaration of Chad E. Milton, marked for identification as of this date.)</p> <p>8 Q. I'm handing you Exhibit 5.</p> <p>9 Please turn to paragraph 2 of your declaration on page 2.</p> <p>10 A. Okay.</p> <p>11 Q. How long did you practice law?</p> <p>12 A. I was first admitted to the bar in Colorado in 1974, and practiced law for two years as a deputy state public defender there.</p> <p>13 Since then, I have never been in</p>	<p style="text-align: right;">Page 8</p> <p>1 Chad E. Milton</p> <p>2 description was when you worked as a claims attorney?</p> <p>3 A. The job of claims attorney is to represent the insurance company in the management of claims. In this context -- in some contexts something like that can be viewed as an adjuster.</p> <p>4 In the context of media liability insurance, all of the claims are litigated; so, the function of the claims attorney is to manage that litigation for the insurance company.</p> <p>5 Q. Were you involved in the decisions to undertake a duty to defend or contest a duty to defend in cases?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And were you involved in the decision as to whether the insurance company would reserve rights when it undertook the duty to defend?</p> <p>8 A. Yes, I was.</p> <p>9 Q. Okay. Were you the person who would sign, actually sign the letter undertaking the defense of reserving rights?</p>
<p style="text-align: right;">Page 7</p> <p>1 Chad E. Milton</p> <p>2 the private practice of law.</p> <p>3 My role at Media Professional</p> <p>4 Insurance was what's called a claims</p> <p>5 attorney, which is functioning as a</p> <p>6 representative of the insurance company in</p> <p>7 managing claims. It's not the practice of</p> <p>8 law in the sense that you are thinking of.</p> <p>9 Q. Okay. And how long did you remain</p> <p>10 in active status in Colorado?</p> <p>11 A. I went inactive shortly after I</p> <p>12 left Colorado in 1976. I stayed active for a</p> <p>13 couple of years and then went inactive.</p> <p>14 Q. And then, when did you become a</p> <p>15 member of the Missouri bar?</p> <p>16 A. I became a member of the Missouri</p> <p>17 bar in -- took the bar exam there in February</p> <p>18 of 1978.</p> <p>19 Q. Okay. And how long were you active</p> <p>20 in Missouri?</p> <p>21 A. I was active until about three</p> <p>22 years ago.</p> <p>23 Q. Okay. Now, you mentioned that you</p> <p>24 worked as a claims attorney. As a claims</p> <p>25 attorney -- well, tell me what your job</p>	<p style="text-align: right;">Page 9</p> <p>1 Chad E. Milton</p> <p>2 A. Yes, I was.</p> <p>3 Q. Have you ever, in your work as a</p> <p>4 claims attorney, signed a letter that</p> <p>5 asserted that the insurance company was</p> <p>6 denying coverage because the conduct at issue</p> <p>7 was intentional?</p> <p>8 A. No, I don't believe I did.</p> <p>9 Q. Did you ever sign a letter in which</p> <p>10 an insurance company reserved its rights with</p> <p>11 respect to the issue of whether the conduct</p> <p>12 at issue was intentional?</p> <p>13 A. No, I don't believe I did. That</p> <p>14 notion isn't in the media liability policies</p> <p>15 that I've worked with.</p> <p>16 Q. Did you ever, as a claims attorney,</p> <p>17 work with respect to other types of policies</p> <p>18 held by media companies other than a media</p> <p>19 liability policy?</p> <p>20 A. I'm sorry. I didn't understand the</p> <p>21 question.</p> <p>22 Q. Okay. A media liability policy is</p> <p>23 one type of an insurance policy that</p> <p>24 insurance companies offer; right?</p> <p>25 A. Yes. That's right.</p>

Page 10		Page 12	
1	Chad E. Milton	1	Chad E. Milton
2	Q. So, for instance, insurance	2	liabilities policies, in your work as a
3	companies also offer things such as	3	claims attorney, did you ever receive a
4	comprehensive general liability policies;	4	demand for coverage from a policyholder with
5	correct?	5	respect to an ordinary negligence case?
6	A. Yes, insurance companies do that.	6	MR. HENTOFF: Objection to the form
7	Q. So, and am I wrong to think that	7	of the question.
8	not every insurance policy that the media	8	A. I think I understand what you're
9	company has is a media liability insurance	9	asking; but, forgive me, I think you may be
10	policy; right?	10	asking a different question than what I have
11	A. No. That would be correct.	11	in mind.
12	But in my experience, my experience	12	The answer to the question that I
13	was only with the media liability policy.	13	understand you're asking, an ordinary
14	Q. That's what I was trying to get to.	14	negligence case, such as you might find in a
15	A. Right.	15	general liability policy, the answer to that
16	Q. So, if a media organization that	16	is No, because those kinds of claims aren't
17	was a policyholder of the company you were	17	covered by the media liability policy.
18	working for made a claim with respect to some	18	There is a coverage in media
19	pending claim, or even a lawsuit that had	19	liability policies that's called contextual
20	been filed, but the claim was not made under	20	negligence, or contextual errors omissions,
21	the media liability policy, it was made,	21	which involves coverage for harm to readers
22	let's say, under their CGL, you wouldn't have	22	of matter, where the reader is harmed by
23	been involved in it?	23	relying on erroneous material, such as, the
24	A. I would not have been involved. I	24	most common example is fitness advice.
25	would not have been involved. And just by	25	Q. So, the idea behind that would be
Page 11		Page 13	
1	Chad E. Milton	1	Chad E. Milton
2	way of explanation, the organizations that I	2	the media publication, let's say, has a
3	worked with only managed the media liability	3	columnist who writes about health and welfare
4	policy, and not any other kind of policy at	4	issues, the columnist advises the readers to
5	all.	5	go on a low cholesterol diet.
6	Q. Okay. So, you, is it fair to say	6	A. Right.
7	you don't have any experience on what	7	Q. And some reader comes out of the
8	insurance companies would or would not deny	8	woodwork later and says, I followed this
9	coverage on under a CGL policy?	9	writer's advice, went on a low cholesterol
10	A. I have no personal knowledge of	10	diet, and some terrible health outcome
11	that.	11	resulted; that would be the sort of claim
12	Q. All right. And, indeed, you do not	12	that would fall under --
13	have any personal knowledge of what media --	13	A. Under the --
14	excuse me, what insurance companies would or	14	Q. -- under the contextual errors and
15	would not deny under any sort of policy	15	omissions coverage?
16	other than the media liability policy?	16	A. That's right. And that's the kind
17	A. I have no experience with that.	17	of negligence that I do have experience with.
18	Q. Okay. And you would also have no	18	The kind of negligence, the
19	experience as to what situations an insurance	19	ordinary negligence case I do not.
20	company would reserve its rights under a	20	Q. Okay. So, if I had a slip and fall
21	policy that was not a media liability policy;	21	on the first floor of the New York Times
22	correct?	22	building, that would not be covered under a
23	A. That's correct. That's outside my	23	typical media liability policy?
24	experience.	24	A. It would not be covered under a
25	Q. Okay. With respect to media	25	typical media liability policy.

Page 14		Page 16	
1	Chad E. Milton	1	Chad E. Milton
2	Just to be clear, the media	2	Q. So, did you ever have a situation
3	liability policy covers perils that arise in	3	where an insured interposed a claim that
4	the gathering, preparation and the utterance	4	involved an employee who you had judged not
5	of content.	5	to be acting within the scope of their
6	Q. Okay. So, how about if a reporter	6	employment?
7	going out to cover a story or meet with a	7	A. I don't recall any specific
8	source gets into a traffic accident; is that	8	instances like that that I can name, but I am
9	covered under a media liability policy?	9	sure that that has happened.
10	A. No, it would not be.	10	Q. And in that situation the typical
11	Q. And what's the reason for that?	11	media liability policy only covers acts
12	A. The reason is that that -- the	12	within the scope of employment; correct?
13	policies cover, typically cover named perils,	13	A. That would be right, only within
14	and except for the contextual errors and	14	the scope of employment.
15	omissions that I mentioned, negligence is not	15	Q. Okay. So, although you don't
16	a named peril.	16	remember specifics, based on your experience
17	So, the activities, the perils that	17	in the industry, an insurer would typically
18	are covered are things like liable invasion	18	deny coverage if it had determined that, in
19	of privacy, copyright infringement, and so	19	fact, the actions occurred outside the
20	forth; so that the example you gave wouldn't	20	employee's scope of employment; correct?
21	give rise to a peril that would be covered by	21	A. If the act occurred outside the
22	the media liability policy.	22	scope of employment, then the policy would
23	Q. Okay. So, to take it one step	23	not apply; that would be right.
24	further, let's say a reporter was issued a	24	Q. During your work as a claims
25	car by the media organization that employed	25	attorney, did you ever work with any policy
Page 15		Page 17	
1	Chad E. Milton	1	Chad E. Milton
2	the reporter.	2	that was, that contained an exclusion for
3	And the reporter got into that car	3	willful misconduct?
4	and drove somewhere on a personal errand --	4	A. I don't recall that. That kind of
5	say, to meet with a friend, or something like	5	language just isn't typical in media
6	that, something that had nothing to do with	6	liability policies.
7	the reporter's job, and the reporter in that	7	Q. And if I were to ask the same
8	context ran someone over on the street in	8	question with respect to gross negligence,
9	that trip.	9	would you give the same answer?
10	That would, in your experience, be	10	A. Yes, I would give you the same
11	outside the bounds of a media liability	11	answer.
12	policy; correct?	12	Q. Okay. With respect to the
13	A. Yes, it would be outside the bounds	13	preparation of this declaration, Exhibit 5,
14	of a media liability policy.	14	did you review any documents in preparing it?
15	Q. Okay. In your work as a claims	15	A. Well, as I state in the
16	attorney, did you ever issue any sort of a	16	declaration, I reviewed the section 9.05 of
17	denial letter with respect to a claim that	17	the release language, but that's all.
18	your employer felt was outside the scope of	18	Q. Okay. So, you didn't go back and
19	employment of the person who was the -- well,	19	look at any of your own work papers, for
20	that's a bad way framed question.	20	instance, in the past?
21	Do you understand the concept, at	21	A. Well, I did.
22	least in a general sense, of scope of	22	Just to sort of refresh my memory
23	employment in the law?	23	about things, I read the, re-read the chapter
24	A. Yes, I have a general understanding	24	that is cited in the, in my declaration of --
25	of that.	25	it's part of Judge Sack's book. I looked at

Page 18		Page 20	
1	Chad E. Milton	1	Chad E. Milton
2	articles that are posted on my firm's	2	would look at specimen policies; correct?
3	Website.	3	A. Yes. That's right.
4	Q. Okay. So, we have 9.05. We have	4	Q. And other than the specimen
5	the chapter of Judge Sack's book. And we	5	policies, articles on your company's Website,
6	have articles on your Website, your company's	6	Judge Sack's book and paragraph 9.05 of the
7	Website.	7	plan, is there anything else that you
8	Other than those documents, are	8	reviewed in preparation for your, making your
9	there any other documents that you reviewed	9	declaration in this case?
10	in preparing the opinion that you would in	10	A. No. There's nothing else.
11	this declaration?	11	Q. Okay. So, what do you do now? You
12	A. I did look at specimen policies of	12	talked about your work as a claims attorney.
13	media liability policies, just to confirm my	13	What do you do now?
14	impressions.	14	A. Now I act as an independent
15	Q. Okay. And just for the record,	15	consultant on matters relating to media
16	what's a specimen policy?	16	liability risk and insurance. Our clients
17	A. A specimen is a sample policy.	17	are insurance buyers, insurance brokers, and
18	Q. And let's just fill this out a bit.	18	insurance companies.
19	Am I wrong that a typical insurance policy	19	Q. And as a consultant, do you
20	contains a front page, a cover page, a	20	participate only in the purchasing process,
21	declarations page, and then contains a bunch	21	or do you also participate in the claims
22	of mostly standardized language behind it;	22	process?
23	correct?	23	A. We participate where the client
24	A. Yes, that structure is correct.	24	asks us to participate. We've been involved
25	Q. Right. So, a specimen policy	25	in the process of drafting insurance policies
Page 19		Page 21	
1	Chad E. Milton	1	Chad E. Milton
2	contains language, which is standard, that's	2	for insurance companies. We've been involved
3	used by the insurance company repeatedly	3	in helping insurance companies manage a
4	over time in various policies that it issues;	4	runoff book of claims. We've been involved
5	correct?	5	in helping negotiate coverage disputes.
6	A. Yes. That's what a specimen policy	6	And we've also been involved with
7	is.	7	helping insurance buyers place insurance. We
8	Q. So, a specimen policy would contain	8	are not insurance brokers.
9	the language that is typically found in that	9	So that we, we don't act as actual
10	type of insurance policy; correct?	10	in the placement of the policy, but we advise
11	A. That's -- yes, that's right.	11	on it.
12	Q. Okay. But there could be	12	Q. Okay. Has any of your clients ever
13	situations where a specific insured might	13	asked you to include an exclusion in a policy
14	negotiate a different term, or a change in	14	for willful misconduct?
15	the specimen terms; correct?	15	A. No.
16	A. Yes, that happens.	16	Q. Has any of your clients ever asked
17	It happens either by way of	17	you to include an exclusion for gross
18	changing the specimen policy, the standard	18	negligence?
19	policy, by way of endorsement, or by creating	19	A. No.
20	an entirely new policy, a new contract, which	20	Q. In your current employment as an
21	is called a bespoke, or a manuscript policy.	21	independent consultant, have you ever come
22	Q. And if I were just researching an	22	across a policy that contained an exclusion
23	insurance issue and I wanted to know what do	23	for willful misconduct?
24	insurance companies typically include in	24	A. No.
25	terms of language on a particular point, I	25	Q. Have you ever come across a policy

Page 22		Page 24	
1	Chad E. Milton	1	Chad E. Milton
2	that included an exclusion for gross	2	you would go back to the insurance company
3	negligence?	3	and ask them to take it out; wouldn't you?
4	A. No.	4	A. Yes, I would ask them to take it
5	Q. Has any one, any of your clients at	5	out.
6	your current, during your current employment	6	Q. And why?
7	as an independent consultant, ever asked you	7	A. Because exclusionary language like
8	to interpret a policy that contained a	8	that undercuts the entire purpose of a media
9	willful misconduct exclusion?	9	liability policy. Because the media
10	A. No.	10	liability policies cover perils, and
11	Q. And would your answer be the same	11	implicitly or explicitly cover the elements
12	as to gross negligence?	12	that give rise to the perils.
13	A. Yes, it would.	13	And sometimes, in certain cases,
14	Q. Okay. And now, going back in your	14	the evidence that supports the perils might
15	prior employment, in your various positions	15	be called gross negligence or willful
16	relating to the insurance industry, going all	16	misconduct.
17	the way back over four decades, has anyone	17	And in those cases where I'm
18	ever asked you to interpret language in a	18	representing the potential insured, I don't
19	policy excluding willful misconduct?	19	want to run the risk of losing the benefit of
20	A. No. I don't think so. That's just	20	the insurance policy, because you run the
21	not a concept that is in media liability	21	risk of losing, because you've lost the
22	policies.	22	claim.
23	Q. Okay. And would your answer be the	23	I want coverage for the claims that
24	same as to gross negligence?	24	we lose, as well as for coverage for claims
25	A. Yes, it would be.	25	that we win.
Page 23		Page 25	
1	Chad E. Milton	1	Chad E. Milton
2	MR. ESPER: Okay. Let's take a	2	Q. And to concretize this a bit, one
3	short break.	3	of the situations where you would be
4	Off the record.	4	concerned about the language of the exclusion
5	(Whereupon, an off-the-record	5	undercutting the purpose of the policy would
6	discussion was held.)	6	be where there was a defamation claim;
7	MR. ESPER: On the record.	7	correct?
8	Q. Now, you indicated in your current	8	A. Yes. That is correct. It's most
9	work you sometimes work for insurance	9	important in a defamation claim.
10	companies and sometimes for policyholders;	10	Q. Your concern would be that a
11	right?	11	defamation claim might end up falling within
12	A. Yes. That's right. We work for	12	the exclusion for gross negligence and
13	both.	13	willful misconduct; correct?
14	Q. Okay. So, I want, for the next	14	A. Yes, I would be concerned about
15	question I'm going to ask you a hypothetical	15	that.
16	and I want you to put yourself in a position	16	Q. Okay. Now, even media liability
17	where you're working for a policyholder	17	policies do contain some exclusions; correct?
18	rather than an insurance company, or a	18	A. Yes, they do contain exclusions.
19	potential policyholder that are seeking	19	Q. So, is it correct that a typical
20	insurance.	20	exclusion would cover criminal acts by the
21	A. Um-hum.	21	reporter?
22	Q. So, if your client seeking media	22	A. That is a typical exclusion.
23	liability insurance is sent a draft policy by	23	Q. Okay.
24	an insurance company that contained a gross	24	A. Although in many policies that
25	negligence and willful misconduct exclusion,	25	exclusion has a carve-back for the coverage

Page 26		Page 28	
1	Chad E. Milton	1	Chad E. Milton
2	can be extended to criminal acts under	2	the illegal intrusion, that claim would be
3	certain circumstances.	3	defended under a reservation of rights, but
4	Q. Okay. And what would be a typical	4	would not be paid if there were a finding
5	version of the carve-back that you just --	5	that were, that there was a criminal conduct.
6	A. The typical carve-back is that the	6	Q. Okay. I understand. And I think I
7	exclusion would not apply in circumstances	7	understand where you're, what you're
8	where the conduct was approved by the	8	testifying to; but I'm actually, I think,
9	insured's counsel, for reasons that it was	9	asking a slightly different question, which
10	protected by the First Amendment.	10	is part of your opinion that you've given in
11	Q. Okay. So, for instance, that might	11	this case. It's not simply an opinion about
12	cover a situation where a reporter was held	12	the content of the insurance policies, but
13	in contempt for refusing to reveal a source?	13	also an opinion about the content of media
14	A. Well, that's treated differently in	14	company indemnification agreements; correct?
15	insurance, in a different place in insurance	15	A. No. My opinion --
16	policies.	16	MR. HENTOFF: Objection. I'm
17	Q. Okay. So, what would be an example	17	sorry. Go ahead.
18	of something that an insurance company	18	A. No. My opinion is only about
19	counsel, in your experience, might approve in	19	indemnification under insurance when
20	terms of a criminal act?	20	insurance is involved.
21	A. Counsel might approve an illegal	21	Q. Okay. Turn the page to paragraph
22	wiretap as a way of gathering, protecting	22	22 of your declaration. I'll read it into
23	newsworthy information.	23	the record because it's short.
24	Q. I understand. Okay.	24	"Based on my experience, because
25	So, let's take a situation where	25	insurance coverage would be available, as a
Page 27		Page 29	
1	Chad E. Milton	1	Chad E. Milton
2	the exclusion does apply; so, it's not	2	matter of course a media company would
3	conduct that's been approved by the insurance	3	indemnify and defend its employees and
4	counsel, it's just an illegal act by a	4	free-lancers for defamation claims alleging
5	reporter that was never run by the insurance	5	willful misconduct or gross negligence."
6	counsel, and it's going to fall within the	6	That's an opinion about what media companies
7	exclusion.	7	would do, and not simply about what insurance
8	Now, in your experience, do media	8	companies would do; right?
9	companies typically indemnify for that type	9	A. No. It's my understanding of the
10	of conduct in their indemnification	10	paragraph, that has to do with indemnities in
11	agreements?	11	the context of insurance coverage.
12	MR. HENTOFF: Objection to the form	12	Q. Okay. But what did you mean by "a
13	of the question.	13	media company would indemnify and defend"?
14	A. Yes, they would indemnify for that	14	A. What I mean is that a media company
15	kind of conduct; they would defend and	15	would extend insurance coverage to its
16	indemnify.	16	employees and its independent contractors.
17	It would depend on what the	17	Q. Okay. So, you have no opinion as
18	allegations of the complaint were. If they	18	to what might be contained in contracts
19	were a defamation claim, the defamation claim	19	between a media company and their reporters?
20	would be -- if that defamation claim arose	20	A. No. I have no opinion about that.
21	from the conduct, or was, the publication had	21	Q. And you have no idea of what
22	information that was gathered during that	22	obligations a media company might believe it
23	illegal wiretap, let's say, the defamation	23	has with respect to actually paying claims
24	claim would be covered.	24	made against their employees?
25	If there were a separate claim for	25	MR. HENTOFF: Objection to the form

<p style="text-align: right;">Page 30</p> <p>1 Chad E. Milton</p> <p>2 of the question.</p> <p>3 A. I have experience with media</p> <p>4 companies that have asked to extend coverage</p> <p>5 to employees in ways contrary to indemnity</p> <p>6 agreements and contractual agreements. And I</p> <p>7 understand those situations.</p> <p>8 In general, I don't have an opinion</p> <p>9 about those contracts.</p> <p>10 Q. Okay. And you do not in your work</p> <p>11 routinely deal with the content of media</p> <p>12 company indemnification agreements with their</p> <p>13 employees; correct?</p> <p>14 A. That is correct. I don't routinely</p> <p>15 deal with that, with those contracts between</p> <p>16 the publishers and their content providers.</p> <p>17 Q. Okay. And if I were to, let's</p> <p>18 say -- I'll ask you a question, and then I'll</p> <p>19 ask if you have knowledge about that area.</p> <p>20 But the question would be: Outside</p> <p>21 of what the insurance policy may contain and</p> <p>22 what the insurance company may do, do media</p> <p>23 companies typically undertake a legal</p> <p>24 obligation to indemnify their reporters for</p> <p>25 willful misconduct? You would not have the</p>	<p style="text-align: right;">Page 32</p> <p>1 Chad E. Milton</p> <p>2 Q. And would your answer be the same</p> <p>3 with respect to media companies undertaking</p> <p>4 to indemnify their employees and their</p> <p>5 contracts for acts of gross negligence?</p> <p>6 A. My answer would be the same.</p> <p>7 Is that that's outside the scope of</p> <p>8 my knowledge.</p> <p>9 I do know that it's typical for</p> <p>10 media companies to ask their insurer to cover</p> <p>11 independent contractors.</p> <p>12 MR. HENTOFF: Off the record.</p> <p>13 (Whereupon, an off-the-record</p> <p>14 discussion was held.)</p> <p>15 Q. And I take it you also are</p> <p>16 expressing no opinion about whether any</p> <p>17 particular indemnification agreement made by</p> <p>18 a media company would actually be enforced in</p> <p>19 court, if somebody decided to test it?</p> <p>20 A. No. I have no opinion about</p> <p>21 enforceability of those contracts.</p> <p>22 Q. Okay. So, you're not expressing</p> <p>23 any opinion about whether an indemnification</p> <p>24 agreement that indemnifies willful misconduct</p> <p>25 would be considered a contract in violation</p>
<p style="text-align: right;">Page 31</p> <p>1 Chad E. Milton</p> <p>2 expertise to answer that question?</p> <p>3 A. I do not have the expertise to</p> <p>4 answer that question.</p> <p>5 I do know that media companies have</p> <p>6 the power under most, the media liability</p> <p>7 policies to extend coverage to independent</p> <p>8 contractors, and have often been asked by</p> <p>9 media companies to do that.</p> <p>10 Q. But that's an issue of what the</p> <p>11 insurance company is going to end up</p> <p>12 covering; correct?</p> <p>13 A. That is correct. And that's the</p> <p>14 only issue that I deal with.</p> <p>15 Q. And whatever may or may not be in</p> <p>16 the contract between the media company and</p> <p>17 the independent contractor, you would not</p> <p>18 know that?</p> <p>19 A. Sometimes I see those contracts,</p> <p>20 but that's not my issue and it's not</p> <p>21 something that I'm asked to advise about.</p> <p>22 Q. And it's not something that you</p> <p>23 have any particular expertise on?</p> <p>24 A. That's correct. I don't have any</p> <p>25 particular expertise.</p>	<p style="text-align: right;">Page 33</p> <p>1 Chad E. Milton</p> <p>2 of public policy?</p> <p>3 A. No. As between a publisher and its</p> <p>4 free-lance writers, I have no opinion about</p> <p>5 that.</p> <p>6 Q. Or as between a publisher and its</p> <p>7 employed writers; right?</p> <p>8 A. Likewise, I have no opinion about</p> <p>9 that.</p> <p>10 Q. And that your answer would be the</p> <p>11 same as to contracts that indemnify, purport</p> <p>12 to indemnify gross negligence; right?</p> <p>13 A. Well, with respect to all those</p> <p>14 contracts between the publisher and other</p> <p>15 persons, I have no opinion.</p> <p>16 Q. Now, let's go on to paragraphs 20</p> <p>17 and 21 on page 6 of your declaration, Exhibit</p> <p>18 5. You can read them to yourself, so that</p> <p>19 you know what we're going to talk about.</p> <p>20 A. Okay.</p> <p>21 (Pause)</p> <p>22 Q. And I believe you've testified</p> <p>23 earlier that in preparation for this</p> <p>24 declaration, you read sections 9.05 of the</p> <p>25 plan; correct?</p>

Page 34		Page 36
1	Chad E. Milton	1
2	A. That's right.	2
3	Q. Yeah. So, did you read any of the	3
4	correspondence negotiating section 9.05 of	4
5	the plan?	5
6	A. No, I didn't read any of that	6
7	correspondence.	
8	Q. Did you have any conversations with	7
9	any of the people who negotiated section 9.05	8
10	of the plan concerning what they talked about	9
11	with each other?	10
12	A. No. I had no conversations with	11
13	anyone about that.	12
14	Q. Okay. You have no opinion as to	13
15	what the drafters may have actually intended	14
16	when they included the language about gross	15
17	negligence and willful misconduct in section	16
18	9.05; correct?	17
19	A. I have no knowledge and no opinion	18
20	about the intent behind this language.	19
21	Q. Okay. Have you ever advised anyone	20
22	who was drafting a plan of liquidation in a	21
23	bankruptcy court?	22
24	A. No. I've never been involved with	23
25	a bankruptcy.	24
Page 35		Page 37
1	Chad E. Milton	1
2	Q. And fair to stay that before this	2
3	case you've never been asked by anyone in any	3
4	capacity to interpret language contained in a	4
5	release in a bankruptcy plan?	5
6	MR. HENTOFF: Objection to the form	6
7	of the question.	7
8	A. No. That's correct. I've never	8
9	been asked to participate or advise in any	9
10	way in a bankruptcy claim.	10
11	Q. So, you have no experience as to	11
12	how legal terminology is used in a bankruptcy	12
13	plan; correct?	13
14	A. That's correct; I have no knowledge	14
15	about that.	15
16	Q. So, for instance, if hypothetically	16
17	and I want to make clear, I'm assuming a fact	17
18	that may not actually be in evidence, but if,	18
19	hypothetically, gross negligence and willful	19
20	misconduct were terms of art in the	20
21	bankruptcy context, that's not something you	21
22	would know about; correct?	22
23	A. That's correct; I would not know	23
24	about those terms of art.	24
25	Q. Okay. If you had been consulted by	25

Page 38		Page 40
1	Chad E. Milton	1
2	claims of gross negligence or willful	2
3	misconduct, it would conceivably exclude any	3
4	and all defamation claims. In my experience	4
5	the indemnification obligations of a media	5
6	company to its employees and free-lancers do	6
7	not contain any such exception, as it would	7
8	render the indemnification obligation almost	8
9	meaningless.	
10	"This is because many, if not most	
11	defamation lawsuits seek to prove that a	
12	defendant's conduct was intentional and	
13	wrongful and the purpose of the	
14	indemnification obligations is to protect	
15	employees and free-lancers not only when they	
16	win a defamation case, but also when they	
17	lose one."	
18	So, first of all, you say, "many,	
19	if not most defamation lawsuits seek to prove	
20	that a defendant's conduct was intentional	
21	and wrongful."	
22	There are defamation cases that are	
23	brought based on theories of ordinary	
24	negligence; correct?	
25	A. Yes. A lawsuit brought by a	
Page 39		Page 41
1	Chad E. Milton	1
2	private person in most states would allege	2
3	that the reporter's or writer's state of mind	3
4	was one of negligence.	4
5	They would still allege that the	5
6	statement was made intentionally.	6
7	Q. However, am I not right to infer	7
8	that you are leaving open in this paragraph	8
9	the possibility that a defamation claim based	9
10	on ordinary negligence might not trigger the	10
11	gross negligence willful misconduct	11
12	exclusion; correct?	12
13	MR. HENTOFF: Objection to the form	13
14	of the question.	14
15	A. Yes. It's my view that	15
16	exclusionary language doesn't exclude all	16
17	claims, but only certain claims.	17
18	And from an insurer's point of	18
19	view, and an insurance buyer's point of view,	19
20	if it excludes some claims, that makes the	20
21	policy unfair and illusory.	21
22	So, the short answer to your	22
23	question is Yes, but there's a longer answer,	23
24	too.	24
25	Q. Okay. And you said "unfair and	25

Page 42		Page 44
1	Chad E. Milton	1
2	policy illusory?	2
3	MR. HENTOFF: Objection to the form	3
4	of the question.	4
5	Incomplete hypothetical.	5
6	A. I would not consider that to be	6
7	illusory, because the expectation is made	7
8	clear. But it's not something that anybody	8
9	would buy.	9
10	Q. Let's go on with this.	10
11	Your first sentence in paragraph 21	11
12	says, "If section 9.05 of the plan were read	12
13	to exclude a defamation plaintiff's claims of	13
14	gross negligence or willful misconduct." You	14
15	testified you read section 9.05.	15
16	Do you believe there is any other	16
17	reasonable reading of it, other than it would	17
18	exclude a defamation plaintiff's claims of	18
19	gross negligence and willful misconduct?	19
20	MR. HENTOFF: Objection to the form	20
21	the question.	21
22	And if you're going to ask the	22
23	witness about section 9.05, would you	23
24	please show it to him so he can review	24
25	it before answering your question about	25
Page 43		Page 45
1	Chad E. Milton	1
2	it?	2
3	MR. ESPER: I think I can ask the	3
4	witness the question, and if the witness	4
5	responds in a certain way, he responds	5
6	in a certain way. If he responds in	6
7	another way, I can ask another question,	7
8	or I can show him what I want to show	8
9	him.	9
10	MR. HENTOFF: You're permitted to	10
11	do whatever you want to do.	11
12	That's my objection.	12
13	MR. ESPER: Yes. Okay.	13
14	Q. So, you reviewed section 9.05 in	14
15	preparing this declaration; correct?	15
16	A. I did.	16
17	Q. Okay. So, your first sentence of	17
18	paragraph 21 states a hypothetical: "If	18
19	section 9.05 were read to exclude a	19
20	defamation plaintiff's claim of gross	20
21	negligence or willful misconduct," and my	21
22	question is: Did you conclude there was any	22
23	other possible reading of section 9.05?	23
24	MR. HENTOFF: Objection to the form	24
25	of the question. Same objection.	25

<p style="text-align: right;">Page 46</p> <p>1 Chad E. Milton</p> <p>2 contain an exclusion for gross negligence or</p> <p>3 willful misconduct would be approved by a</p> <p>4 bankruptcy court?</p> <p>5 MR. HENTOFF: Objection to the form</p> <p>6 of the question.</p> <p>7 A. No. As I testified earlier, I've</p> <p>8 had no experience with bankruptcy and did no</p> <p>9 research into bankruptcy proceedings in</p> <p>10 connection with this.</p> <p>11 Q. And did you do any analysis as to</p> <p>12 whether or not New York law would permit such</p> <p>13 a release without the gross negligence or</p> <p>14 willful misconduct language?</p> <p>15 A. No. I did no such research.</p> <p>16 Q. Other than the opinions that you</p> <p>17 included in this declaration, did you form</p> <p>18 any other opinions relating to the issues in</p> <p>19 this case?</p> <p>20 A. No. My only opinions are set out</p> <p>21 in the declaration.</p> <p>22 Q. Okay.</p> <p>23 MR. ESPER: Let's take a very short</p> <p>24 break.</p> <p>25 Off the record.</p>	<p style="text-align: right;">Page 48</p> <p>1 Chad E. Milton</p> <p>2 State of New York -- what is the standard of</p> <p>3 fault when a libel case is brought by a</p> <p>4 non-public figure, versus when a libel case</p> <p>5 is brought by a public figure?</p> <p>6 MR. ESPER: Object as to form.</p> <p>7 A. Well, of course you don't know</p> <p>8 until the end of the litigation whether the</p> <p>9 plaintiff is a private person or a public</p> <p>10 person.</p> <p>11 But the law in most states is that</p> <p>12 when the plaintiff is a private person, the</p> <p>13 standard of conduct is negligence.</p> <p>14 Q. And what about if the plaintiff is</p> <p>15 a public figure?</p> <p>16 MR. ESPER: Same objection.</p> <p>17 A. Then the standard of conduct is</p> <p>18 actual malice -- that term of art, as knowing</p> <p>19 a reckless disregard for the truth.</p> <p>20 Q. And is it ever disputed in a case</p> <p>21 between the parties whether or not the</p> <p>22 plaintiff qualifies as a public figure or a</p> <p>23 non-public figure?</p> <p>24 MR. ESPER: Same objection.</p> <p>25 A. Yes, it's -- that's often disputed.</p>
<p style="text-align: right;">Page 47</p> <p>1 Chad E. Milton</p> <p>2 (Whereupon, a short recess was</p> <p>3 taken.)</p> <p>4 MR. ESPER: Back on the record.</p> <p>5 I have no further questions.</p> <p>6 MR. HENTOFF: So, I just have a</p> <p>7 couple of questions.</p> <p>8 MR. ESPER: Go ahead.</p> <p>9 MR. HENTOFF: Okay.</p> <p>10 EXAMINATION BY</p> <p>11 MR. HENTOFF:</p> <p>12 Q. Mr. Milton, you recall that you</p> <p>13 were asked some questions about circumstances</p> <p>14 in which a libel case could be brought, but</p> <p>15 the plaintiff would only be claiming</p> <p>16 negligence as a standard of fault; do you</p> <p>17 remember that?</p> <p>18 A. Yes, I do remember that.</p> <p>19 Q. And do you recall being asked</p> <p>20 about --</p> <p>21 Well, strike that question.</p> <p>22 And in some cases can you tell us</p> <p>23 about, very generally, about your</p> <p>24 understanding of what the standard of fault</p> <p>25 is -- let's say for right now, outside the</p>	<p style="text-align: right;">Page 49</p> <p>1 Chad E. Milton</p> <p>2 Q. Let's imagine a situation in which</p> <p>3 a plaintiff has filed a defamation lawsuit,</p> <p>4 and a court determines that the plaintiff is</p> <p>5 a non-public figure. Do you understand that?</p> <p>6 A. Yes.</p> <p>7 Q. Are there circumstances in that</p> <p>8 case in which the issue of whether the</p> <p>9 defendant acted with actual malice might</p> <p>10 nevertheless be litigated in that case?</p> <p>11 MR. ESPER: Same objection.</p> <p>12 A. Yes, actual malice would be</p> <p>13 relevant, for instance, if, in fact, punitive</p> <p>14 damages were sought.</p> <p>15 Q. Are you familiar with the concept</p> <p>16 of the defense of privilege in a defamation</p> <p>17 case?</p> <p>18 MR. ESPER: Same objection.</p> <p>19 A. Yes, I am.</p> <p>20 Q. Can you just give an example of a</p> <p>21 kind of defamation privilege that might be</p> <p>22 asserted by a defendant in a defamation case?</p> <p>23 MR. ESPER: Same objection.</p> <p>24 A. A defendant might assert that the</p> <p>25 story was a fair and accurate report of a</p>

		Page 50	Page 52
1	Chad E. Milton	1	
2	public proceeding.	2	E X H I B I T S
3	Q. So, with regard to defamation cases	3	Milton Exhibit 5, expert
4	in which a privilege is asserted, let's	4	declaration of Chad E. Milton
5	imagine still that the plaintiff is a	5	
6	non-public figure. Are there ever situations	6	(Exhibit Maintained By Reporter)
7	in which either malice or actual malice is	7	I N D E X
8	litigated in the context of whether a	8	EXAMINATION BY
9	defamation privilege applies in the case?	9	MR. ESPER
10	MR. ESPER: Same objection.	10	MR. HENTOFF
11	A. Yes.	11	INFORMATION AND/OR DOCUMENTS REQUESTED
12	MR. HENTOFF: I have no further	12	(None)
13	questions.	13	QUESTIONS MARKED FOR RULINGS
14	EXAMINATION (cont'd)	14	(None)
15	BY MR. ESPER:	15	
16	Q. Mr. Milton, in a situation where a	16	
17	claim is made that could result in coverage,	17	
18	but also could result in coverage ultimately	18	
19	being denied, the insurance company has the	19	
20	option of defending with a reservation of	20	
21	rights; correct?	21	
22	A. Yes. That's correct.	22	
23	A claim that's potentially not	23	
24	covered will be defended under reservation of	24	
25	rights.	25	
		Page 51	Page 53
1	Chad E. Milton	1	
2	MR. ESPER: No further questions.	2	C E R T I F I C A T E
3	MR. HENTOFF: And we have no	3	
4	further questions either.	4	STATE OF NEW YORK)
5	THE WITNESS: Thank you.	5	: SS.:
6	(Whereupon, at 11:19 a.m., the	6	COUNTY OF NEW YORK)
7	Examination of this witness was	7	
8	concluded.)	8	I, ROBERT X. SHAW, CSR, a Notary
9		9	Public for and within the State of New York,
10		10	do hereby certify:
11	CHAD E. MILTON	11	That the witness whose examination
12		12	is hereinbefore set forth was duly sworn and
13	Subscribed and sworn to before me	13	that such examination is a true record of the
14	this ____ day of _____. 20 ____.	14	testimony given by that witness.
15		15	I further certify that I am not
16		16	related to any of the parties to this action
17	NOTARY PUBLIC	17	by blood or by marriage and that I am in no
18		18	way interested in the outcome of this matter.
19		19	IN WITNESS WHEREOF, I have hereunto
20		20	set my hand this 22nd day of November 2017.
21		21	
22		22	<i>Robert X. Shaw</i>
23		23	ROBERT X. SHAW, CSR
24		24	
25		25	

<p>Exhibits</p> <p>EX 0005 Chad E. Milton Exhibit 111517</p> <p>\$</p> <p>\$300 5:23</p> <p>1</p> <p>1974 6:22</p> <p>1976 7:12</p> <p>1978 7:18</p> <p>2</p> <p>2 6:17,18</p> <p>20 33:16</p> <p>21 33:17 37:21,22 42:11 43:18</p> <p>22 28:22</p> <p>5</p> <p>5 6:12,13,16 17:13 33:18</p> <p>6</p> <p>6 33:17</p> <p>66207 3:13</p> <p>8</p> <p>8821 3:12</p> <p>9</p> <p>9.05 17:16 18:4 20:6 33:24 34:4,9,18 37:3,24 42:12,15,23 43:14,19,23 44:21 45:5</p> <p>A</p> <p>absence 36:16</p>	<p>accident 14:8</p> <p>act 16:21 20:14 21:9 26:20 27:4</p> <p>acting 16:5</p> <p>actions 16:19</p> <p>active 7:10,12,19,21</p> <p>activities 14:17</p> <p>activity 40:14</p> <p>acts 16:11 25:20 26:2 32:5</p> <p>actual 21:9 40:6,17</p> <p>add 36:18</p> <p>address 3:11</p> <p>adjuster 8:8</p> <p>admitted 6:21</p> <p>advice 12:24 13:9 36:21</p> <p>advise 21:10 31:21 35:9 36:25 37:8,9, 12,15</p> <p>advised 34:21 36:15</p> <p>advises 13:4</p> <p>agree 44:2</p> <p>agreement 32:17,24</p> <p>agreements 27:11 28:14 30:6,12 44:6</p> <p>ahead 6:10 28:17 47:8</p> <p>Alhambra 3:12</p> <p>allegations 27:18</p> <p>allege 39:2,5 40:6</p> <p>alleging 29:4</p> <p>allowed 4:12</p> <p>Amendment 26:10</p> <p>analysis 45:24 46:11</p> <p>answering 42:25</p> <p>answers 45:22</p> <p>apply 16:23 26:7 27:2 44:16,18</p> <p>approve 26:19,21</p> <p>approved 26:8 27:3 46:3</p> <p>area 30:19</p> <p>arise 14:3 40:13</p> <p>arose 27:20</p> <p>art 35:20,24</p> <p>articles 18:2,6 20:5</p> <p>asks 20:24</p> <p>asserted 9:5</p> <p>assume 40:2</p> <p>assumed 44:25</p> <p>assuming 35:17</p> <p>assumption 45:4</p> <p>attorney 7:5,24,25 8:3,4,11 9:4,16 12:3 15:16 16:25 20:12</p> <p>authors 44:21</p> <hr/> <p style="text-align: center;">B</p> <p>back 17:18 22:14,17 24:2 36:2 45:20,22 47:4</p> <p>background 6:8</p> <p>bad 15:20</p> <p>bankruptcy 34:23,25 35:5,10,12,21 36:2 45:25 46:4,8,9</p> <p>bar 6:21 7:15,17</p> <p>based 16:16 28:24 38:23 39:9</p> <p>benefit 24:19</p> <p>bespoke 19:21</p> <p>bit 18:18 25:2</p> <p>book 17:25 18:5 20:6 21:4</p> <p>bounds 15:11,13</p> <p>break 4:13 23:3 46:24</p> <p>brokers 20:17 21:8</p> <p>brought 38:23,25 47:14</p> <p>building 13:22</p> <p>bunch 18:21</p> <p>business 40:4</p> <p>buy 42:9</p> <p>buyer's 39:19</p> <p>buyers 20:17 21:7</p> <hr/> <p style="text-align: center;">C</p> <p>call 6:11</p> <p>called 3:2 7:4 12:19 19:21 24:15</p> <p>capacity 35:4</p> <p>car 14:25 15:3</p> <p>carve-back 25:25 26:5,6</p> <p>case 5:8 12:5,14 13:19 20:9 28:11</p>
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35:3 38:16 44:25	27:9 29:6,8 30:4,23	contrary 30:5 40:21
46:19 47:14	31:5,9 32:3,10 40:10	conversations 34:8,12
cases 8:16 24:13,17	company 7:6 8:5,13,19	copyright 14:19
38:22 47:22	9:5,10 10:9,17 11:20	correct 5:5 10:5,11
CGL 10:22 11:9	19:3 23:18,24 24:2	11:22,23 15:12
Chad 3:1,10 4:1 5:1	26:18 28:14 29:2,13,	16:12,20 18:23,24
6:1,14 7:1 8:1 9:1	14,19,22 30:12,22	19:5,10,15 20:2
10:1 11:1 12:1 13:1	31:11,16 32:18 38:6	25:7,8,13,17,19
14:1 15:1 16:1 17:1	company's 18:6 20:5	28:14 30:13,14
18:1 19:1 20:1 21:1	compensated 5:22	31:12,13,24 33:25
22:1 23:1 24:1 25:1	complaint 27:18	34:18 35:8,13,14,22,
26:1 27:1 28:1 29:1	comprehensive 10:4	23 36:6 37:19 38:24
30:1 31:1 32:1 33:1	conceivably 38:3	39:12 43:15 45:15,18
34:1 35:1 36:1 37:1	concept 15:21 22:21	correspondence 34:4,7
38:1 39:1 40:1 41:1	concern 25:10	counsel 26:9,19,21
42:1 43:1 44:1 45:1	concerned 25:4,14	27:4,6
46:1 47:1	conclude 43:22	couple 7:13 47:7
change 19:14	concretize 25:2	court 4:21 5:3 32:19
changing 19:18	conduct 9:6,11 26:8	34:23 46:4
chapter 17:23 18:5	27:3,10,15,21 28:5	cover 14:7,13 18:20
cholesterol 13:5,9	38:12,20 40:16,18	24:10,11 25:20 26:12
circumstances 3:24	confirm 18:13	32:10 44:14,22
26:3,7 47:13	connection 46:10	coverage 9:6 11:9
cited 17:24	considered 32:25	12:4,18,21 13:15
claim 4:7,8 10:18,19,	41:4,15	16:18 21:5 24:23,24
20 13:11 15:17 16:3	consultant 20:15,19	25:25 28:25 29:11,15
24:22 25:6,9,11	21:21 22:7	30:4 31:7 36:14,23
27:19,20,24,25 28:2	consulted 35:25 36:11	37:11 40:12,19 41:7,
35:10 39:9 40:20	contained 17:2 21:22	10,20,23
43:20	22:8 23:24 29:18	covered 12:17 13:22,
claiming 47:15	35:4	24 14:9,18,21 27:24
claims 7:4,7,24 8:2,	contempt 26:13	41:18
4,6,10,11 9:4,16	content 14:5 28:12,13	covering 31:12
12:3,16 15:15 16:24	30:11,16	covers 14:3 16:11
20:12,21 21:4 24:23,	contest 8:15	41:2
24 29:4,23 38:2,4	context 8:6,9 15:8	creating 19:19
39:17,20 40:6 42:13,	29:11 35:21	criminal 25:20 26:2,
18 44:14,22 45:11	contexts 8:7	20 28:5
clear 4:22 14:2 35:17	contextual 12:19,20	current 21:20 22:6
42:8	13:14 14:14	23:8
client 20:23 23:22	contract 19:20 31:16	<hr/>
36:25	32:25 37:10 41:5,7,	D
clients 20:16 21:12,	9,10 45:9	
16 22:5	contractor 31:17	date 6:15
Colorado 6:22 7:10,12	contractors 29:16	deal 30:11,15 31:14
columnist 13:3,4	31:8 32:11	dealings 5:13
common 12:24	contracts 29:18 30:9,	decades 22:17
communications 5:16,	15 31:19 32:5,21	decided 32:19
19	33:11,14 44:5	decision 8:19
companies 9:18,24	contractual 30:6	decisions 8:14
10:3,6 11:8,14 19:24		
20:18 21:2,3 23:10		

declaration 6:8,14,18
 17:13,16,24 18:11
 20:9 28:22 33:17,24
 43:15 46:17,21
declarations 18:21
defamation 4:8 25:6,
 9,11 27:19,20,23
 29:4 37:25 38:4,11,
 16,19,22 39:9 40:5
 41:23,24 42:13,18
 43:20 44:14,18,22
 45:11
defeating 37:18
defend 8:15,16,21
 27:15 29:3,13
defendant's 38:12,20
defended 28:3
defender 6:23
defense 8:25
demand 12:4
denial 15:17
denied 40:20
denies 40:19
deny 11:8,15 16:18
denying 9:6
depend 27:17
deposition 3:16 4:11,
 14
deputy 6:23
description 8:2
determine 44:20
determined 16:18
diet 13:5,10
differently 26:14
discussion 6:7 23:6
 32:14
dispute 4:2
disputes 21:5
documents 17:14 18:8,
 9
draft 23:23
drafted 36:3
drafters 34:15 36:2
 45:5
drafting 20:25 34:22
drove 15:4
duly 3:3
duty 8:15,16,21

E

earlier 33:23 37:16
 45:12 46:7
easier 37:23
effect 37:18
elements 24:11
employed 5:8 14:25
 33:7
employee 16:4
employee's 16:20
employees 29:3,16,24
 30:5,13 32:4 38:6,15
employer 15:18
employment 15:19,23
 16:6,12,14,20,22
 21:20 22:6,15
end 25:11 31:11
endorsement 19:19
enforceability 32:21
enforced 32:18
engage 44:19 45:24
engaged 5:9
entire 24:8
errand 15:4
erroneous 12:23
errors 12:20 13:14
 14:14
ESPER 3:7 6:10 23:2,7
 43:3,13 46:23 47:4,8
evidence 24:14 35:18
Ewing 5:14
exam 7:17
EXAMINATION 3:6 47:10
examined 3:5
exception 38:7
exclude 37:25 38:3
 39:16 42:13,18 43:19
excluded 40:7
excludes 39:20
excluding 22:19
exclusion 17:2 21:13,
 17,22 22:2,9 23:25
 25:4,12,20,22,25
 26:7 27:2,7 36:4
 39:12 46:2
exclusionary 24:7
 37:14 39:16 40:18,19
 44:5

exclusions 25:17,18
excuse 11:14
exhibit 6:11,12,13,16
 17:13 33:17
expect 40:12 44:14
expectation 42:7
expectations 40:21
expected 44:13
experience 10:12
 11:7,17,19,24 13:17
 15:10 16:16 26:19
 27:8 28:24 30:3
 35:11 38:4 41:4,6
 44:4 46:8
expert 5:10 6:3,13
expertise 31:2,3,23,
 25
explanation 11:2
explicitly 24:11
expressing 32:16,22
extend 29:15 30:4
 31:7 37:11
extended 26:2
extensive 6:7
extent 40:14

F

fact 3:24 16:19 35:17
 40:3
facts 36:18 44:20
fair 11:6 35:2 40:7,9
 44:24
fall 13:12,20 27:6
falling 25:11
fault 47:16,24
February 7:17
felt 15:18
figures 40:5 41:24,25
filed 10:20
fill 18:18
find 12:14
finding 28:4
finish 4:17,19
firm 5:10,12,14
firm's 18:2
fitness 12:24
floor 13:21
forgive 12:9

forgotten 4:3
form 12:6 27:12 29:25
 35:6 36:7 37:4 39:13
 41:13 42:3,20 43:24
 45:2,16 46:5,17
found 19:9
framed 15:20
free-lance 33:4
free-lancers 29:4
 38:6,15
friend 15:5
front 18:20
function 8:11
functioning 7:5

G

gathered 27:22
gathering 14:4 26:22
 44:20
gave 14:20
general 10:4 12:15
 15:22,24 30:8
generally 47:23
give 5:4 14:21 17:9,
 10 24:12
Good 3:14,15
Gray 5:16
gross 17:8 21:17
 22:2,12,24 23:24
 24:15 25:12 29:5
 32:5 33:12 34:16
 35:19 36:5 37:2 38:2
 39:11 42:14,19 43:20
 44:15 46:2,13
ground 4:11

H

handing 6:16
happened 16:9
harm 12:21
harmed 12:22
health 13:3,10
held 9:18 23:6 26:12
 32:14
helping 21:3,5,7
HENTOFF 12:6 27:12
 28:16 29:25 32:12
 35:6 36:7 37:4 39:13

41:13 42:3,20 43:10,
 24 45:2,16,19 46:5
 47:6,9,11
Hentoff's 5:19
hour 5:23
hours 5:24
hypothetical 23:15
 36:19 41:22 42:5
 43:18
hypothetically 35:16,
 19

I

idea 12:25 29:21
identification 6:15
illegal 26:21 27:4,23
 28:2
illusory 39:21 40:2,
 22,23 41:4,7,12,20
 42:2,7
implicitly 24:11
important 25:9
impressions 18:14
inactive 7:11,13
include 19:24 21:13,
 17 36:4
included 22:2 34:16
 37:3,17 46:17
Incomplete 42:5
indemnification 27:10
 28:14,19 30:12
 32:17,23 38:5,8,14
indemnifies 32:24
indemnify 27:9,14,16
 29:3,13 30:24 32:4
 33:11,12
indemnities 29:10
indemnity 30:5
independent 20:14
 21:21 22:7 29:16
 31:7,17 32:11
industry 16:17 22:16
infer 39:7
information 4:3 26:23
 27:22
infringement 14:19
inoperative 45:10
inquisition 4:14

instance 10:2 17:20
 26:11 35:16
instances 16:8
insurance 3:25 4:5,6
 7:4,6 8:5,10,12,19
 9:5,10,23,24 10:2,6,
 8,9 11:8,14,19 18:19
 19:3,10,23,24 20:16,
 17,18,25 21:2,3,7,8
 22:16 23:9,18,20,23,
 24 24:2,20 26:15,18
 27:3,5 28:12,19,20,
 25 29:7,11,15 30:21,
 22 31:11 36:14,17,23
 37:11,13,17 39:19
 40:11 41:2,10,22
 44:6,13 45:9,15
insured 16:3 19:13
 24:18 40:13,22 41:17
insured's 26:9
insurer 16:17 32:10
 44:15 45:9
insurer's 39:18 44:9,
 11
intended 34:15 44:21
 45:6
intent 34:20
intentional 9:7,12
 38:12,20
intentionally 39:6
interposed 16:3
interpret 22:8,18
 35:4
interpreted 44:7
intrusion 28:2
invasion 14:18
involved 8:14,18
 10:23,24,25 16:4
 20:24 21:2,4,6 28:20
 34:24 36:14
involves 12:21
involving 3:25
irrespective 37:9
issue 9:6,11,12 15:16
 19:23 31:10,14,20
 44:8
issued 14:24
issues 13:4 19:4
 46:18

J <hr/> <p>job 7:25 8:4 15:7 journalism 40:4 Judge 17:25 18:5 20:6 judged 16:4</p> <hr/> K <hr/> <p>Kansas 3:13 kind 11:4 13:16,18 17:4 27:15 40:17 kinds 12:16 41:17 44:17 knowledge 11:10,13 30:19 32:8 34:19 35:14</p> <hr/> L <hr/> <p>language 17:5,17 18:22 19:2,9,25 22:18 24:7 25:4 34:16,20 35:4 36:25 37:10,14,17 39:16 40:20 44:12 45:8,10, 14 46:14 law 5:3,10,12,14 6:20,22 7:2,8 15:23 46:12 lawsuit 10:19 38:25 lawsuits 38:11,19 leaving 39:8 left 7:12 legal 30:23 35:12 letter 8:24 9:4,9 15:17 level 40:16 liabilities 12:2 liability 4:6 8:9 9:14,19,22 10:4,9, 13,21 11:3,16,21 12:15,17,19 13:23,25 14:3,9,22 15:11,14 16:11 17:6 18:13 20:16 22:21 23:23 24:9,10 25:16 31:6 liable 14:18 libel 47:14</p>	Likewise 33:8 liquidation 34:22 litigated 8:10 litigation 8:12 long 6:20 7:9,19 longer 39:23 looked 17:25 lose 24:24 38:17 losing 24:19,21 lost 24:21 low 13:5,9	memory 17:22 mentioned 7:23 14:15 milton 3:1,10,14 4:1 5:1 6:1,13,14 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1, 12 mind 12:11 39:3 misconduct 17:3 21:14,23 22:9,19 23:25 24:16 25:13 29:5 30:25 32:24 34:17 35:20 36:5 37:2 38:3 39:11 42:14,19 43:21 44:16 46:3,14 Mission 3:13 Missouri 7:15,16,20 moment 44:7 morning 3:14,15
		M <hr/> <p>made 10:18,20,21 29:24 32:17 39:6 42:7 45:4 make 35:17 37:23 makes 39:20 making 20:8 malice 40:6,17 manage 8:12 21:3 managed 11:3 management 8:6 managing 7:7 manuscript 19:21 mark 6:11 marked 6:14 material 12:23 matter 12:22 29:2 matters 20:15 meaningless 38:9 meant 45:7 mechanism 37:11 media 4:6 7:3 8:9 9:14,18,22 10:8,9, 13,16,21 11:3,13,16, 21,25 12:17,18 13:2, 23,25 14:2,9,22,25 15:11,14 16:11 17:5 18:13 20:15 22:21 23:22 24:8,9 25:16 27:8 28:13 29:2,6, 13,14,19,22 30:3,11, 22 31:5,6,9,16 32:3, 10,18 38:5 40:10 45:15 meet 14:7 15:5 member 7:15,16</p> <hr/> N <hr/> <p>named 14:13,16 negligence 12:5,14,20 13:17,18,19 14:15 17:8 21:18 22:3,12, 24 23:25 24:15 25:12 29:5 32:5 33:12 34:17 35:19 36:5 37:2 38:2,24 39:4, 10,11 42:14,19 43:21 44:16 46:2,13 47:16 negotiate 19:14 21:5 negotiated 34:9 negotiating 34:4 newsworthy 26:23 Notary 3:4 notion 9:14</p> <hr/> O <hr/> <p>oath 5:2</p>

objection 12:6 27:12
28:16 29:25 35:6
36:7 37:4 39:13
41:13 42:3,20 43:12,
24,25 45:2,16 46:5
obligation 5:4 30:24
38:8
obligations 29:22
38:5,14
occasion 3:21
occurred 16:19,21
off-the-record 23:5
32:13
offer 9:24 10:3
offered 41:23
offers 41:7,10
office 5:19
omissions 12:20 13:15
14:15
open 39:8
opinion 18:10 28:10,
11,13,15,18 29:6,17,
20 30:8 32:16,20,23
33:4,8,15 34:14,19
36:17 37:7
opinions 46:16,18,20
ordinary 12:5,13
13:19 38:23 39:10
organization 10:16
14:25
organizations 11:2
outcome 13:10

P

paid 28:4
papers 17:19
paragraph 6:17 20:6
28:21 29:10 37:21,22
39:8 42:11 43:18
paragraphs 33:16
part 17:25 28:10
participate 20:20,21,
23,24 35:9 36:13
parties 4:2
past 17:20
Pause 33:21
paying 29:23
pending 10:19

people 34:9 40:3
peril 14:16,21 41:3,8
perils 14:3,13,17
24:10,12,14 40:13
41:3,11,17 44:17
permit 46:12
permitted 43:10
person 8:23 15:19
36:20 39:2
personal 11:10,13
15:4
persons 33:15 37:12
40:15
place 21:7 26:15
placement 21:10
plaintiff 47:15
plaintiff's 37:25
42:13,18 43:20
plan 20:7 33:25 34:5,
10,22 35:5,13 36:2
37:24 42:12 45:25
point 4:15 19:25
37:21 39:18,19 40:10
44:9,11
policies 9:14,17 10:4
12:2,19 14:13 17:6
18:12,13 19:4 20:2,
5,25 22:22 24:10
25:17,24 26:16 28:12
31:7 44:6
policy 3:25 9:19,22,
23 10:8,10,13,21
11:4,9,15,16,21
12:15,17 13:23,25
14:3,9,22 15:12,14
16:11,22,25 18:16,
17,19,25 19:6,8,10,
18,19,20,21 21:10,
13,22,25 22:8,19
23:23 24:9,20 25:5
30:21 33:2 37:13,18,
19 39:21 40:18 41:2,
21,22 42:2 44:13
45:15
policyholder 10:17
12:4 23:17,19
policyholders 23:10
position 23:16
positions 22:15
possibility 39:9
posted 18:2

potential 23:19 24:18
41:3
potentially 40:7
power 31:6
practice 6:20 7:2,7
practiced 6:22
preparation 14:4
17:13 20:8 33:23
preparing 17:14 18:10
43:15
presence 36:16
prior 22:15
privacy 14:19
private 7:2 39:2
41:24
proceedings 46:9
process 20:20,22,25
professional 6:7 7:3
protect 38:14
protected 26:10
protecting 26:22
prove 38:11,19
providers 30:16
public 3:4 6:23 33:2
40:4,15 41:25
publication 13:2
27:21
publisher 33:3,6,14
publishers 30:16
40:15
purchasing 20:20
purport 33:11
purpose 24:8 25:5
36:22 37:19 38:13
put 23:16

Q

question 4:18,20 9:21
12:7,10,12 15:20
17:8 23:15 27:13
28:9 30:2,18,20
31:2,4 35:7 36:8
37:5 39:14,23 41:14
42:4,21,25 43:4,7,
22,25 45:3,17,20
46:6 47:21
questions 45:22 47:5,
7,13

<p style="text-align: center;">R</p> <p>ran 15:8 re-read 17:23 read 17:23 28:22 33:18,24 34:3,6 37:22,25 42:12,15 43:19 45:20,22 reader 12:22 13:7 readers 12:21 13:4 reading 42:17 43:23 reason 14:11,12 37:15 reasonable 42:17 reasons 26:9 45:11 recall 3:23 16:7 17:4 47:12,19 receive 12:3 recess 47:2 record 3:9 4:22 18:15 23:4,7 28:23 32:12 37:23 46:25 47:4 referred 45:21 refresh 17:22 refusing 26:13 relating 20:15 22:16 46:18 release 17:17 35:5 44:3,21 46:13 releases 36:22 relying 12:23 remain 7:9 remember 4:4,9,17 16:16 47:17,18 render 38:8 repeatedly 19:3 reporter 4:21 14:6,24 15:2,3,7 25:21 26:12 27:5 45:23 reporter's 15:7 39:3 reporters 29:19 30:24 represent 8:5 representative 7:6 representing 24:18 research 44:19,23 46:9,15 researching 19:22 reservation 28:3 reserve 8:20 11:20</p>	<p>reserved 9:10 reserving 8:25 respect 9:11,17 10:18 11:25 12:5 15:17 17:8,12 29:23 32:3 33:13 41:23 respects 45:11 responds 43:5,6 resulted 13:11 retained 5:9 reveal 26:13 review 17:14 42:24 reviewed 17:16 18:9 20:8 43:14 rights 8:20,25 9:10 11:20 28:3 rise 14:21 24:12 40:16 risk 20:16 24:19,21 role 7:3 Ropes 5:16 routinely 30:11,14 rules 4:11 run 24:19,20 27:5 runoff 21:4</p> <hr/> <p style="text-align: center;">S</p> <p>Sack's 17:25 18:5 20:6 sample 18:17 Saul 5:14 scope 15:18,22 16:5, 12,14,20,22 32:7 section 17:16 34:4,9, 17 37:3,24 42:12,15, 23 43:14,19,23 45:5 sections 33:24 seek 38:11,19 seeking 23:19,22 sense 7:8 15:22 sentence 42:11 43:17 separate 27:25 set 46:20 Shawnee 3:12 short 23:3 28:23 39:22 46:23 47:2 shortly 7:11 show 42:24 43:8</p>	<p>sign 8:24 9:9 signed 9:4 simply 28:11 29:7 44:24 situation 16:2,10 26:12,25 36:24 situations 11:19 19:13 25:3 30:7 slightly 28:9 slip 13:20 sort 11:15 13:11 15:16 17:22 37:13 45:8 source 14:8 26:13 speak 44:10 specific 16:7 19:13 specifics 16:16 specimen 18:12,16,17, 25 19:6,8,15,18 20:2,4 speculate 36:9 standard 19:2,18 47:16,24 standardized 18:22 starting 4:18,20 state 3:4,8 6:23 17:15 39:3 statement 37:21 39:6 40:8,9 states 39:2 43:18 status 7:10 stay 35:2 stayed 7:12 step 14:23 stories 40:15 story 14:7 street 3:12 15:8 strike 47:21 structure 18:24 supports 24:14 suppose 36:20 sworn 3:3</p> <hr/> <p style="text-align: center;">T</p> <p>takes 41:8 talk 33:19 talked 20:12 34:10 talking 4:21</p>
--	--	--

term 19:14
terminology 35:12
terms 19:15,25 26:20
 35:20,24
terrible 13:10
test 32:19
testified 3:5 33:22
 37:16 42:15 45:12
 46:7
testifying 28:8
testimony 5:5
theories 38:23
things 10:3 14:18
 17:23
thinking 7:8
time 4:15 19:4 36:3
times 3:19 13:21
told 36:4,21
track 36:22
traffic 14:8
treated 26:14
trigger 39:10
triggers 40:18
trip 15:9
truthful 5:4
turn 6:17 28:21
type 4:4 9:23 19:10
 27:9
types 9:17
typical 13:23,25
 16:10 17:5 18:19
 25:19,22 26:4,6 32:9
typically 14:13 16:17
 19:9,24 27:9 30:23

U

Um-hum 23:21
undercuts 24:8
undercutting 25:5
underlying 4:7
understand 4:23,24,25
 5:6 9:20 12:8,13
 15:21 26:24 28:6,7
 30:7
understanding 15:24
 29:9 47:24
undertake 8:15 30:23
undertaking 8:25 32:3

undertook 8:20
unfair 39:21,25 40:3,
 22,24 41:12,15,16
utterance 14:4

V

version 26:5
view 39:15,19 44:10,
 11
viewed 8:8
violation 32:25

W

wanted 19:23
ways 30:5
Website 18:3,6,7 20:5
welfare 13:3
willful 17:3 21:14,23
 22:9,19 23:25 24:15
 25:13 29:5 30:25
 32:24 34:17 35:19
 36:5 37:2 38:2 39:11
 42:14,19 43:21 44:16
 46:3,14

win 24:25 38:16
wiretap 26:22 27:23
woodwork 13:8
words 44:2,5,15
work 9:3,17 12:2
 15:15 16:24,25 17:19
 20:12 23:9,12 30:10
worked 5:25 7:24 8:2
 9:15 11:3

working 10:18 23:17

write 40:4
writer's 13:9 39:3
writers 33:4,7 36:24
 40:11,14
writes 13:3
wrong 10:7 18:19
wrongful 38:13,21

Y

years 6:23 7:13,22
York 3:4 13:21 46:12